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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 Yvette Mandujano,

7 Plaintiff,

8 v.

9 Gina; TSE Investments LLC,

10 Defendants.

Case No. 2:24-cv-00442-GMN-DJA

**Order**

11 Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested  
12 authority to proceed *in forma pauperis*. (ECF No. 3). Plaintiff also submitted a complaint. (ECF  
13 Nos. 3-1, 3-2). Because the Court finds that Plaintiff's application is complete, it grants her  
14 application to proceed *in forma pauperis*. However, because the Court finds that Plaintiff's  
15 complaint does not state a claim upon which relief can be granted, it dismisses her complaint with  
16 leave to amend.

17 **I. *In forma pauperis* application.**

18 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 3). Plaintiff has shown an  
19 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed  
20 *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review  
21 Plaintiff's complaint.

22 **II. Screening the complaint.**

23 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
24 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is  
25 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks  
26 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
27 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend  
28 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d  
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of  
7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*  
8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual  
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*  
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations  
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,  
13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory  
14 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the  
15 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.  
16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings  
17 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal  
18 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by  
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.  
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the  
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when  
23 federal law creates the cause of action or where the vindication of a right under state law  
24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277  
25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the  
26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a  
27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in  
 2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of  
 3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete  
 4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each  
 5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 ***A. The Court dismisses Plaintiff’s complaint without prejudice.***

7 Plaintiff brings a civil rights claim against Defendant TSE Investments, LLC<sup>1</sup> which  
 8 Plaintiff lists as residing in California. (ECF No. 3-2 at 2). Plaintiff brings a claim under 42  
 9 U.S.C. § 1983 for violation of her Fourteenth Amendment rights. (*Id.* at 3). Plaintiff alleges that  
 10 Defendant—the owner of the building where Plaintiff is a tenant—has failed to make certain  
 11 repairs to the building and to her unit, causing her and her children to get sick. (*Id.* at 5-7).

12 42 U.S.C. § 1983 is not itself a source of substantive rights, but merely provides a method  
 13 for vindicating federal rights elsewhere conferred. *Graham v. Connor*, 490 U.S. 386, 393-94  
 14 (1989). To obtain relief under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right  
 15 secured by the Constitution or the laws of the United States and must show that the alleged  
 16 deprivation was committed by a person acting under color of law. *West v. Atkins*, 487 U.S. 42,  
 17 48-49 (1988). The traditional definition of acting under color of state law requires that the  
 18 defendant in a § 1983 action have exercised power possessed by virtue of state law and made  
 19 possible only because the wrongdoer is clothed with the authority of state law. *Id.*

20 Here, Plaintiff has not demonstrated that the alleged deprivations were committed by a  
 21 person acting under color of law. Instead, Defendant appears to be a private business and thus,  
 22 there is no allegation of state action. The Court thus dismisses Plaintiff’s complaint with leave to  
 23 amend. While Plaintiff’s claims against Defendant do not arise under 42 U.S.C. § 1983, they may  
 24 arise under some other provision of law. In any amended complaint, Plaintiff must allege the

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25  
 26 <sup>1</sup> Plaintiff has filed two complaints. (ECF Nos. 3-1 and 3-2). Plaintiff indicates that the second  
 27 complaint is an amended complaint, changed to remove Defendant “Gina.” (ECF No. 3-2 at 1).  
 28 Otherwise, the amended complaint appears identical to the first. Because an amended complaint  
 supersedes the original, the Court will only consider the second complaint. (ECF No. 3-2).

1 legal basis for her claims. The Court also directs Plaintiff to the *pro se* resources on its website,<sup>2</sup>  
 2 in particular, the form complaint for a civil case that is not based on a violation of civil rights.<sup>3</sup>

3 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*  
 4 *pauperis* (ECF No. 3) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.  
 5 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of  
 6 any additional fees or costs or the giving of a security therefor. This order granting leave to  
 7 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at  
 8 government expense.

9 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's  
 10 complaint (ECF No. 3-2) on the docket but shall not issue summons.

11 **IT IS FURTHER ORDERED** that the complaint (ECF No. 3-2) is **dismissed without**  
 12 **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.  
 13 Plaintiff will have until **April 19, 2024** to file an amended complaint if the noted deficiencies can  
 14 be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court  
 15 cannot refer to a prior pleading (i.e., the original complaint) to make the amended complaint  
 16 complete. This is because, generally, an amended complaint supersedes the original complaint.  
 17 Local Rule 15-1(a) requires that an amended complaint be complete without reference to any  
 18 prior pleading. Once a plaintiff files an amended complaint, the original complaint no longer  
 19 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,  
 20 each claim and the involvement of each Defendant must be sufficiently alleged. **Failure to**  
 21 **comply with this order will result in the recommended dismissal of this case.**

22 DATED: March 20, 2024

23   
 24 DANIEL J. ALBREGTS  
 25 UNITED STATES MAGISTRATE JUDGE

26 \_\_\_\_\_  
 27 <sup>2</sup> The self-help portal can be found online at <https://www.nvd.uscourts.gov/self-help-portal/>

28 <sup>3</sup> This form can be found online at <https://www.uscourts.gov/forms/pro-se-forms/complaint-civil-case>